



**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to Public Notice No.

Issuance Date: **SEP 30 2008**

**LRH-2007-536-SCR**

Stream:

Closing Date: **NOV 29 2008**

**Right Fork Morgan Fork**

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

**PUBLIC NOTICE:** The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**REGULATORY PROGRAM:** Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

**SECTION 10:** The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**SECTION 404:** The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps' request to the Ohio Environmental Protection Agency to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Southbound Land Company, LLC  
12500 State Route 124  
Piketon, Ohio 45661

**LOCATION:** The proposed project is located on Left and Right Forks Morgan Fork south of Auerville Road and east of Morgans Fork Road in Morgantown, Pike County, Ohio.

**DESCRIPTION OF PROPOSED WORK:** A portion of the applicant's project impacting waters of the United States was completed without the required authorization from this office. It was determined approximately 1,800 linear feet (lf) of the Right Fork of Morgan Fork and 150 lf of the Left Fork of Morgan Fork have been impacted by removal and placement of dredged material for the purpose of flood risk reduction to the property currently used for farming purposes. According to information provided by the applicant, the project would require the temporary placement and removal of dredged material from an additional approximately 2,000 lf of the Right Fork of Morgan Fork within the area of previous impact for the same purpose (flood risk reduction). The placement of fill material associated with prior impacts was to provide access for construction equipment to remove material from other parts of the stream as well as temporarily stockpiling the material in waters of the U.S. The applicant has indicated this construction practice would be continued with the additional proposed work.

As required by the rules and regulations governing the Department of the Army permit program, our office has determined, since the completed work does not present an immediate threat to life or property, an after-the-fact application would be accepted and processed. All investigations and legal proceedings regarding this unauthorized activity will be suspended pending the outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

Plans of the proposal are attached to this notice.

**MITIGATION PLAN:** The applicant has not submitted a proposed mitigation plan for the previous or proposed impacts at this time.

**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the Ohio Environmental Protection Agency.

**HISTORIC & CULTURAL RESOURCES:** The National Register of Historic Places has been consulted and it has been determined the proposed project would have no effect on any property listed on the Register. As the project would occur in a previously disturbed area, it is unlikely the project would have an effect on any property eligible for listing on the Register. A copy of this public notice will be furnished to the State Historic Preservation Office for their review. Comments concerning archaeological sensitivity of the project area should be based on collected data.

**THREATENED & ENDANGERED SPECIES:** The project is located within the known or historic range of the following candidate, threatened, or endangered species:

Indiana bat (E)  
clubshell mussel (E)  
northern riffleshell mussel (E)  
rayed bean mussel (candidate species)

## timber rattlesnake (species of concern)

The Huntington District has determined that the project would have no effect on the Indiana bat as no trees are proposed to be removed in association with the project. The project may affect but would not be likely to adversely affect the three freshwater mussel species as the project would occur in a previously disturbed area that is unlikely to contain any freshwater mussel species. Finally, the project would have no effect on the timber rattlesnake as the previous and proposed impacts would be restricted to the stream and immediate riparian area away from known habitat for the snake. This public notice serves as a request to the USFWS for any additional information they may have on whether any federally listed or proposed species may be present in the area which would be affected by the activity.

**PUBLIC INTEREST REVIEW AND COMMENT:** Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320.332, the Regulatory Program of the U.S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.


**SOLICITATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest

factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

Mr. Jim Spence  
North Regulatory Section, CELRH-OR FN  
U. S. Army Corps of Engineers Huntington District  
502 Eighth Street  
Huntington, West Virginia 25701-2070.

Please note, the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please contact Mr. Jim Spence of the North Regulatory Section at 304-399-5210 or [james.b.spence@usace.army.mil](mailto:james.b.spence@usace.army.mil).



Ginger Mullins, Chief  
Regulatory Branch

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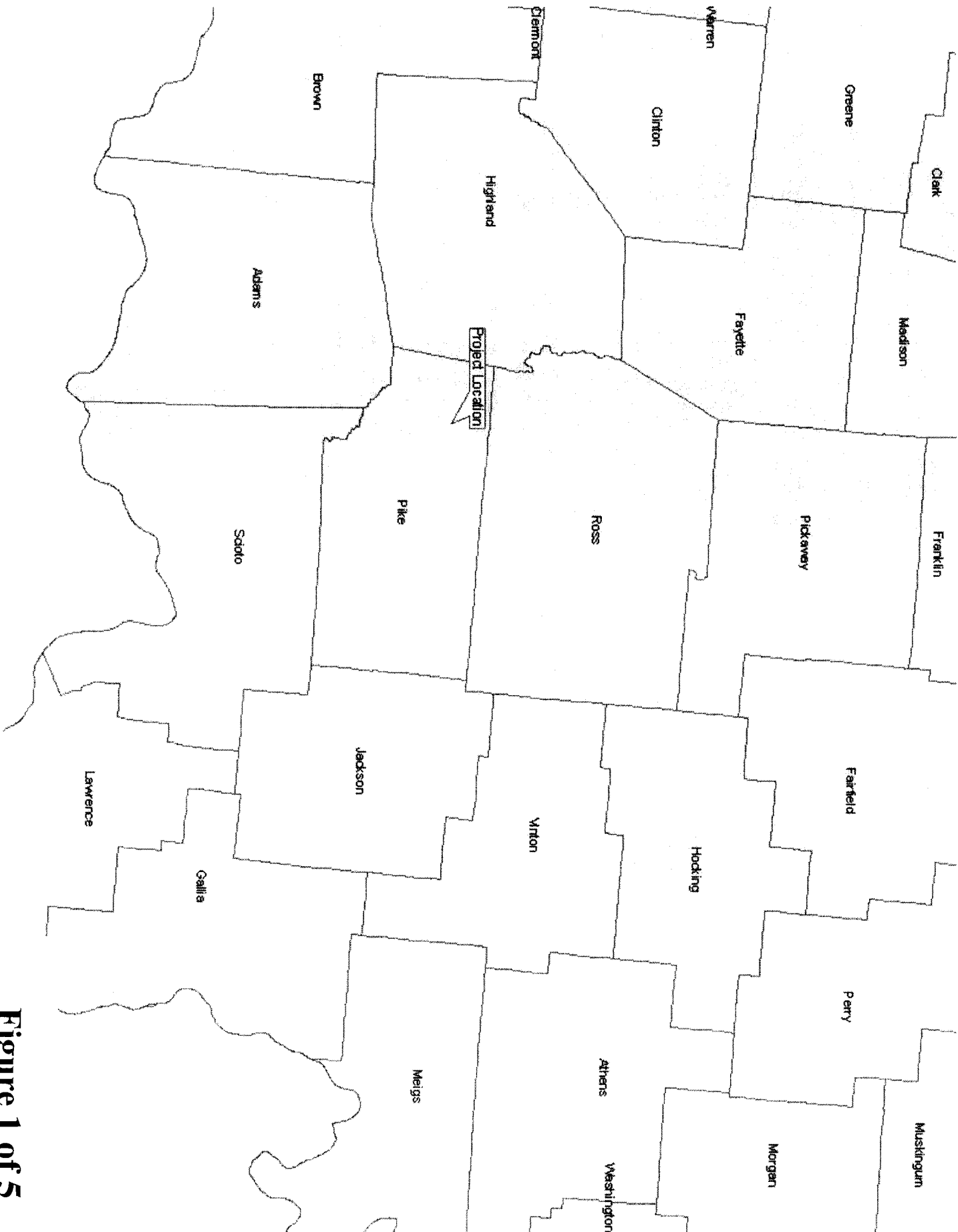


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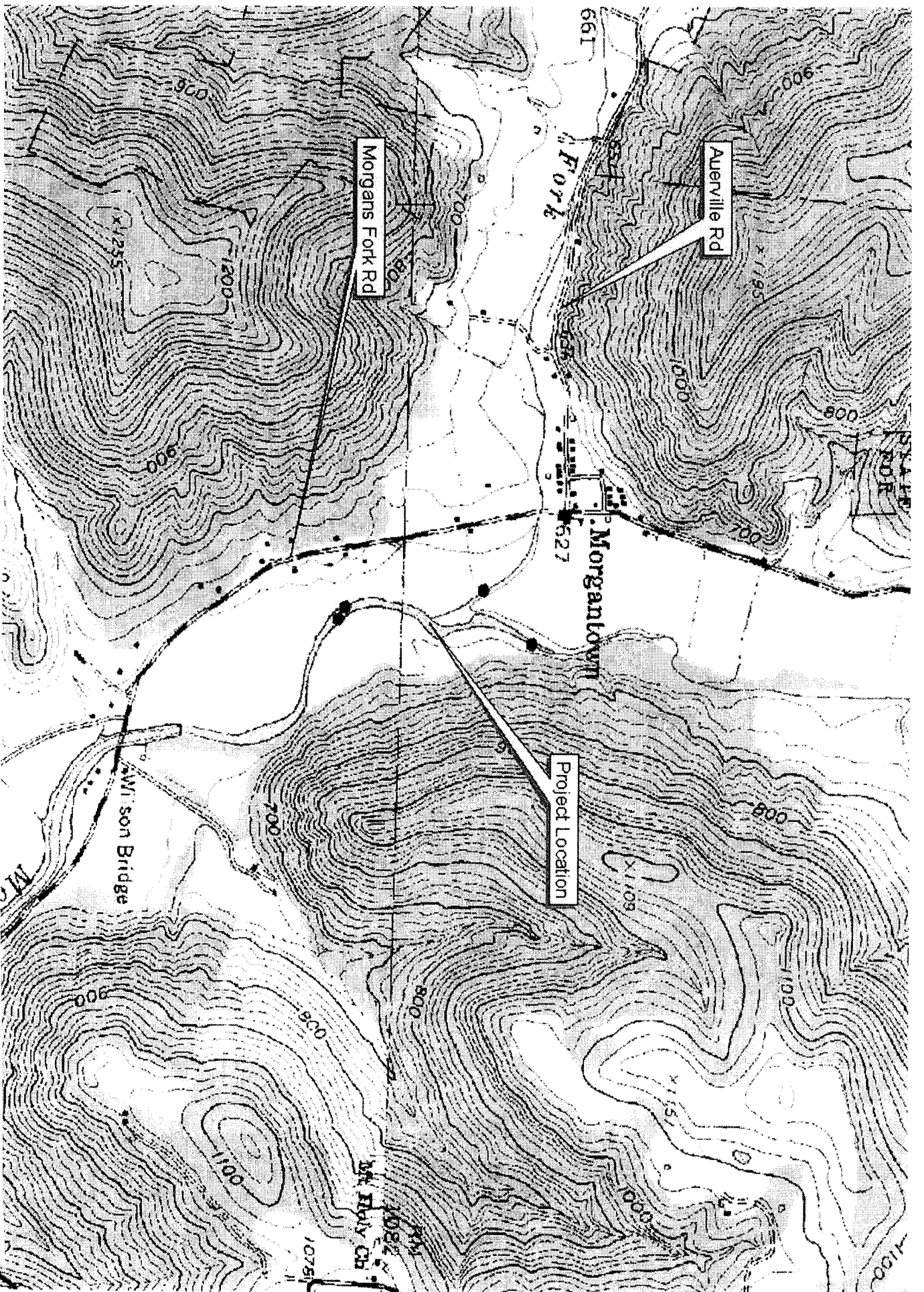


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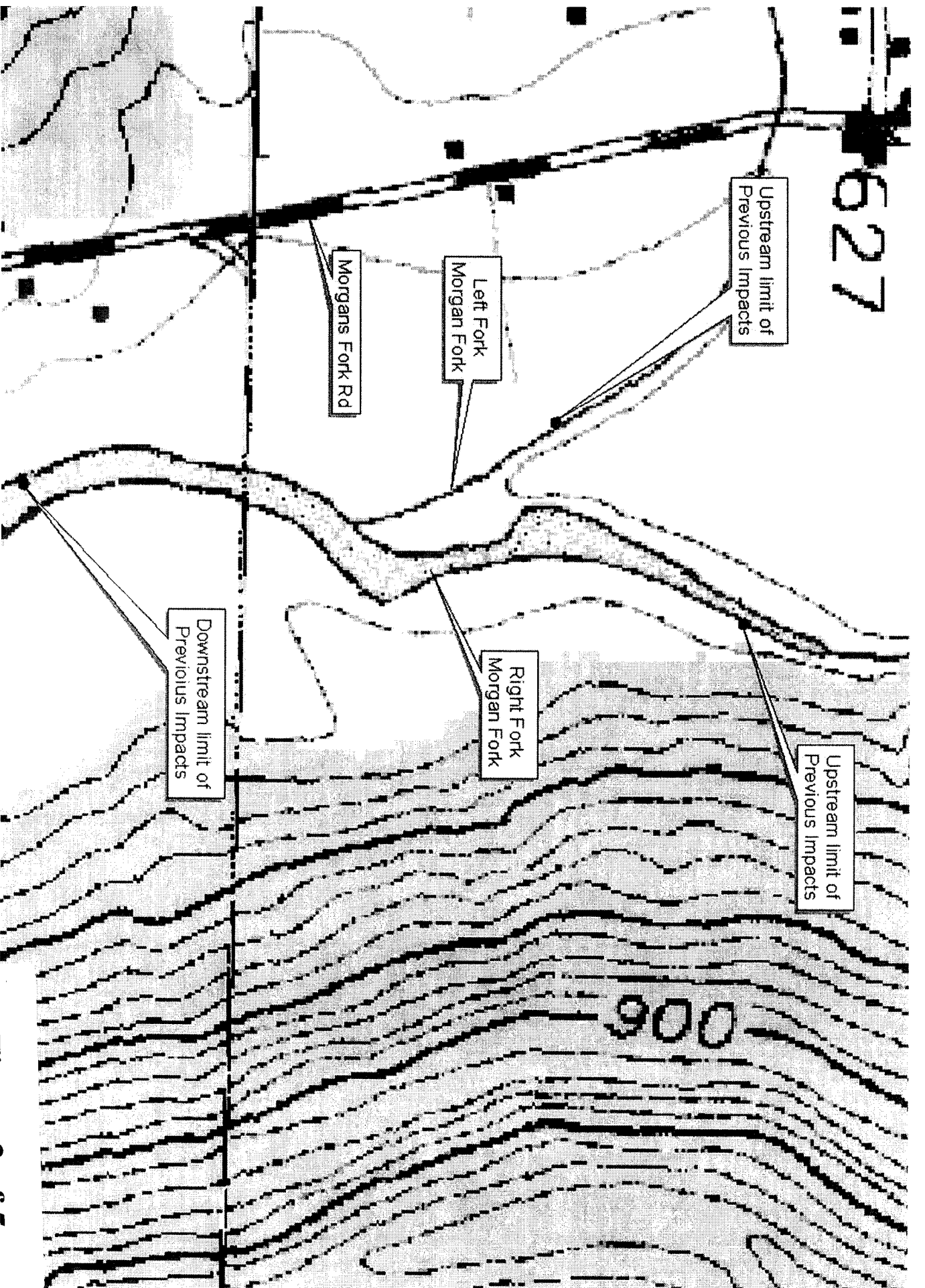
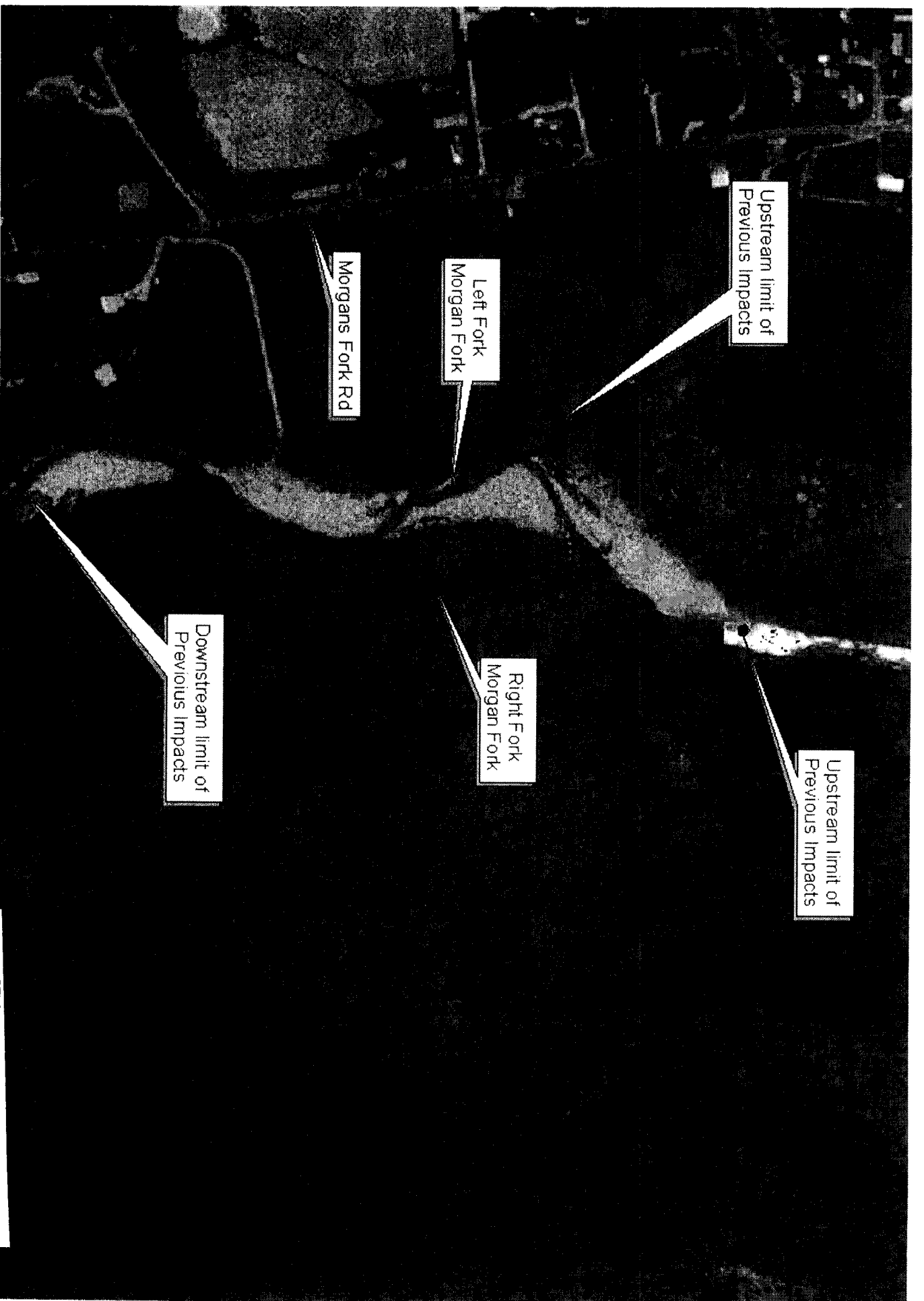


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**Figure 4 of 5**



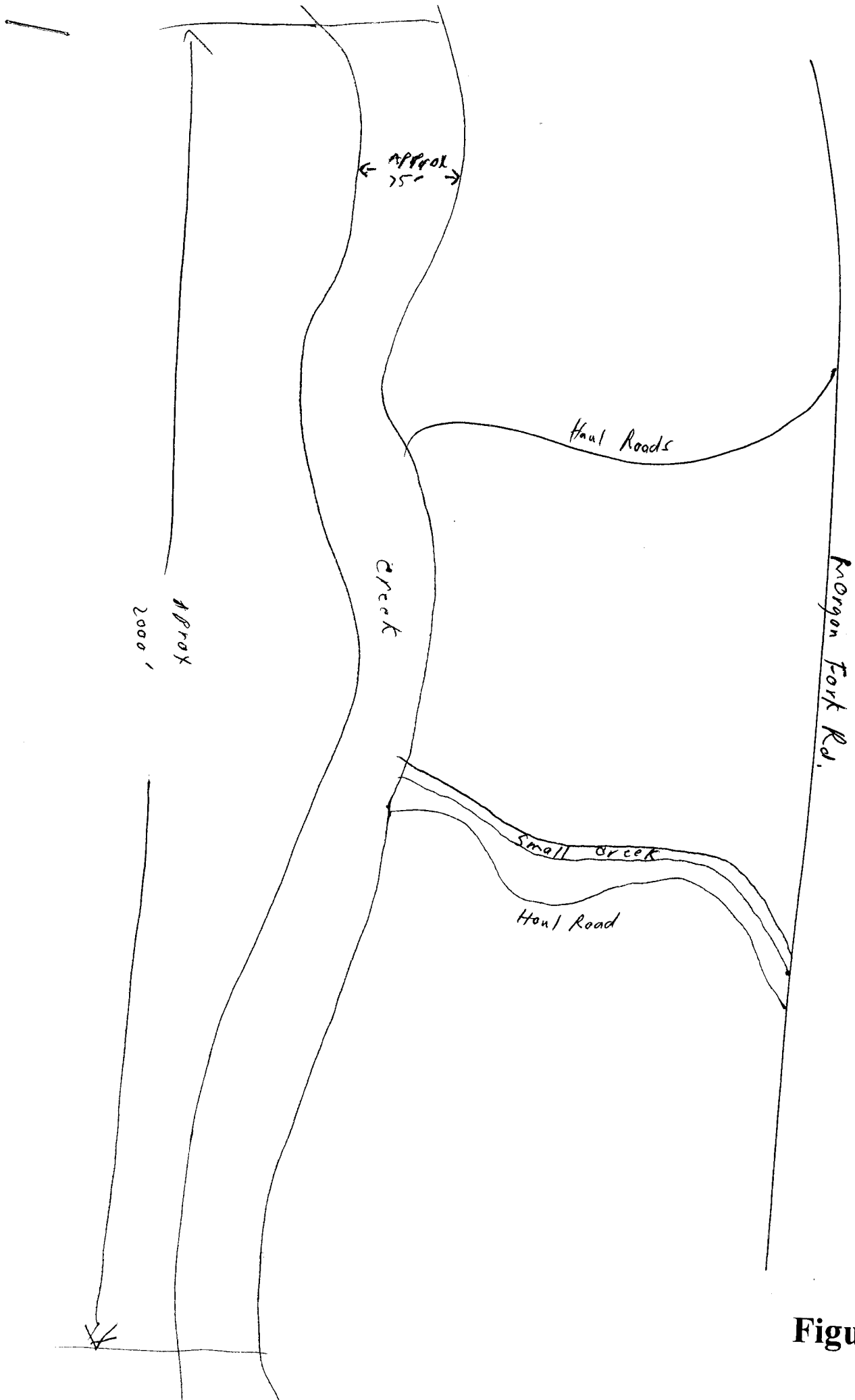


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